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United States Department of Agriculture

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 121

(AGRICULTURAL ECONOMICS)

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR CARRYING OUT THE PROVISIONS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (46 STAT. 531)

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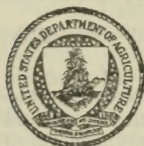
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UNITED STATES DEPARTMENT OF AGRICULTURE,

OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by an "Act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce," approved June 10, 1930 (46 Stat. 531), I, ARTHUR M. HYDE, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations to be in force and effect until amended or superseded by rules and regulations hereafter made by the Secretary of Agriculture under said act.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 4th day of October, 1930.



Arthur M. Hyde

Secretary of Agriculture.

RULES AND REGULATIONS

Regulation 1.—Definitions

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

SEC. 2. The following definitions are included in the act and shall have the same meaning in these regulations.

Paragraph 1. Person.—This term includes individuals, partnerships, corporations, and associations.

Par. 2. Secretary.—This term means the Secretary of Agriculture of the United States.

Par. 3. Interstate or foreign commerce.—This term means commerce between any State or Territory, or the District of Columbia, and any place outside thereof; or between points within the same State or Territory, or the District of Columbia, but through any place outside thereof; or within the District of Columbia.

Par. 4. Perishable agricultural commodity.—This term means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character.

Par. 5. Commission merchant.—This term means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another.

Par. 6. Dealer.—This term means any person engaged in the business of buying or selling in carloads any produce in interstate or foreign commerce; except that no producer shall be required to obtain a license as a dealer if selling only produce of his own raising. A person buying any produce solely for sale at retail shall not be considered a dealer until his purchases of such produce in any one calendar year are in excess of 20 carloads. Producers selling only produce of their own raising and persons buying produce solely for sale at retail whose purchases of such produce do not exceed 20 carloads in any calendar year may elect to secure a license and in such case shall be considered as dealers.

Par. 7. Broker.—This term means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively.

SEC. 3. The following additional definitions shall apply to terms used in these regulations:

Paragraph 1. The perishable agricultural commodities act, 1930, or the act.—This term means an act of Congress entitled, "An act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce," approved June 10, 1930 (46 Stat. 531).

Par. 2. Chief of bureau.—This term means the Chief or Acting Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

Par. 3. Licensee.—This term means any person who holds an unrevoked and valid unsuspended license issued under the act.

Par. 4. Branch.—This term means any subdivision, whether permanent or seasonal, of a firm licensed under this act, whose manager or other person responsible for the conduct of the branch has discretionary authority in performing the usual functions of a commission merchant, dealer, or broker.

Par. 5. Inspector.—This term shall be deemed to mean any inspector of the United States Department of Agriculture under the provisions of the agricultural appropriation act covering the inspection of farm products, or under this act, or any person licensed by the secretary to inspect any perishable agricultural commodity.

Par. 6. Produce.—This term means any perishable agricultural commodity, as defined in section 2 of this regulation.

Par. 7. Fresh fruits and fresh vegetables.—This term includes all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice, and including those held in common or cold storage, but exclusive of those which have been dried or otherwise manufactured into articles of food of a different character.

Par. 8. In carloads.—This term means such quantities of produce as are shipped or received by freight or express in cars on which transportation charges have been assessed at a straight and/or mixed carload rate, and/or the aggregate of such quantities of produce as are shipped or received by a dealer by freight, express, truck, boat, or otherwise, in lots of not less than one-fourth of a carload in any calendar year as determined by the tariff minimum weight for any such commodity as prescribed by any railway tariff on interstate shipments reduced to such minimum carloads.

Par. 9. Truly and correctly to account.—This term shall be deemed to include the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of perishable agricultural commodities in interstate or foreign commerce, with full payment of the gross amount for which each such perishable agricultural commodity is sold, less the proper, usual, or agreed selling charges, with all other expenses necessarily and actually incurred or agreed to in the handling thereof.

Par. 10. Account promptly.—This term means that full accounting and payment of the net proceeds in cash or its equivalent shall be effected within 10 days after the day on which the final sale of any consigned lot of produce shall have been made, unless otherwise provided by agreement between the parties. Provided that in the case of a sale on commission at shipping point or of a shipment diverted while in transit or diverted from one terminal market to another, the 10-day period shall be computed from the time of arrival of the shipment at destination.

Par 11. Reject.—This term shall be deemed to mean the act on the part of the purchaser of refusing or failing to accept any produce received in interstate or foreign commerce within a reasonable time. Reasonable time, as used in this connection, will be considered as not to exceed 24 hours after receipt of notice of the arrival of the produce. Unless the dealer notifies the vendor within 24 hours after he has received notice of the arrival of the produce that he rejects the produce, he will be deemed to have accepted the product as being in accordance with the terms of the contract relating to such produce.

Regulation 2.—Administration

SECTION 1. The chief or acting chief of the bureau shall perform for and under the supervision of the secretary, such duties as the secretary may require in enforcing the provisions of the act and of these regulations.

Regulation 3.—Licenses

SECTION 1. *Paragraph 1.* After December 10, 1930, no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license issued by the Secretary and countersigned by the chief of bureau which is valid and effective at such time.

Par. 2. Any person who maintains one or more branches, as defined in regulation 1, has the option of operating all branches under the license of the parent organization or of taking out a separate license for each branch.

SEC. 2. Any person who desires to secure a license to carry on such business shall make application therefor on a form to be obtained from the chief of bureau or his representative. Applications submitted on behalf of branches must be signed by an authorized official of the parent organization.

SEC. 3. Each application shall be accompanied by the license fee of ten dollars (\$10) in the form of a money order, bank draft, cashier's check, or certified check, made payable to the Disbursing Clerk, Department of Agriculture, and the application and fee shall be forwarded to the Chief of Bureau of Agricultural Economics, Department of Agriculture, Washington, D. C. Thereafter the annual fee of ten dollars (\$10) required by the act shall be remitted in the same manner.

SEC. 4. Unless the annual fee is paid within 30 days after notice has been mailed by the chief of bureau that payment is due, the license shall automatically terminate.

SEC. 5. Upon receipt of each such application for license the Secretary shall, if the applicant is found to be eligible, issue a license which shall certify that the licensee is authorized to engage in the business of a commission merchant and/or dealer and/or broker. Each such license shall bear a serial number, the signature of the Secretary of Agriculture, be issued under the seal of the United States Department of Agriculture, and be countersigned by the Chief of the Bureau of Agricultural Economics. The serial number may appear on the stationery of the licensee.

SEC. 6. The licensee shall advise the chief of bureau promptly of any change in the officers, managers of licensed branches, or ownership of the business or of a discontinuance of the business under the name in which licensed. In case of a change of ownership of a business or of the name of a corporation, or of the death or withdrawal of a partner, a new license is required.

SEC. 7. Any person who shall engage in or carry on any of the various classes of business described in the act without holding a valid license from the Secretary, authorizing him so to conduct or engage in such business, shall be liable to a penalty of not more than \$500 for each offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit instituted by the Attorney General in the name of the United States.

Regulation 4.—Suspension and Revocation

SECTION 1. Whenever, after investigation and opportunity for hearing upon a complaint filed against a licensee, it shall be determined that such licensee has violated any of the provisions of section 2 of the act, the Secretary may publish the facts and circumstances of such violation and/or suspend the license of such offender for a period not to exceed 90 days, except that, if the violation

is a flagrant or repeated violation of such provisions, the Secretary may revoke the license of the offender.

SEC. 2. Immediately upon the issuance of an order of suspension or revocation the Secretary will cause general publicity to be given to his action in order that those doing business with the person whose license shall have been suspended or revoked may take due notice of such action.

SEC. 3. Whenever the Secretary shall issue any order suspending or revoking the license of an offender under this act, the suspension or revocation of the license shall become effective 10 days after the date thereof unless a longer period is prescribed in the order, and any order of suspension shall remain in full force and effect unless and until modified or set aside by the Secretary or by a court of competent jurisdiction.

SEC. 4. *Paragraph 1.* Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served with a copy of the order and of the effective date thereof.

Par. 2. A reasonable time, but not less than 10 days between the date of issuance and the date upon which any such order of suspension or revocation shall become effective, shall be allowed by the Secretary within which the licensee may make all necessary arrangements with some other person, whose license shall not have been either suspended or revoked, to safeguard the interests of consignors or other innocent parties whose property or business may be affected by the suspension of his license and to terminate the affairs and business relating to the handling of perishable agricultural commodities in interstate and foreign commerce of a licensee whose license shall have been revoked.

Par. 3. During the effective period of such suspension or after the revocation of a license issued under this act neither a licensee nor any agent thereof either directly or indirectly shall receive in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another, nor buy or sell in interstate or foreign commerce in carload quantities or the equivalent thereof as the term may be defined by the Secretary or in wholesale or jobbing quantities, nor negotiate sales or purchases for or on behalf of the vendor or the purchaser respectively of any perishable agricultural commodity in interstate or foreign commerce; and shall not attempt to carry on his business by having a licensee possessing a valid license do any of the acts prohibited regardless of whether the fees, commissions, compensations, profits or losses are shared by or with the holder of a suspended or revoked license and the party whose license has not been suspended or revoked.

Par. 4. The suspension or revocation of a license shall not prevent the licensee from collecting amounts due in connection with transactions in which he acted as an agent, and remitting the net proceeds promptly to his principals.

Regulation 5.—Accounts and Records

SECTION 1. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Such records shall be preserved for a period of two years.

Regulation 6.—Penalties for Failure to Keep and Produce Records

SECTION 1. Upon the failure or refusal of any licensee to permit the inspection of accounts, records, and memoranda material to a complaint, the Secretary may publish the facts and circumstances incident thereto and/or suspend the license of the offender until such recognition is given.

SEC. 2. Whenever any licensee shall fail or refuse to keep such records as prescribed in section 9 of the act, the secretary may publish the facts and circumstances and/or by order, suspend the license of the offender for a period not to exceed 90 days.

SEC. 3. Each licensee shall, during ordinary business hours permit any representative of the United States Department of Agriculture to enter the place of business and inspect any or all records pertaining to the business of such licensee in order to ascertain the facts material to the complaint in any investigation under the act. Any necessary facilities for such inspection shall be extended to such representatives by the licensee, his agents, and employees.

Such representatives shall be the authorized agents of the United States Department of Agriculture for the purpose of carrying out the provisions of the act and these regulations.

Sec. 4. No representative of the United States Department of Agriculture shall, without the consent of the licensee, divulge or make known in any manner, except to other representatives of the United States Department of Agriculture as may be required to have such knowledge in the regular course of their official duties, or except in so far as he may be directed by the Secretary, the chief of the bureau, or by a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or accounts of the licensee, or unless the same is relevant and material to the issue in any hearing authorized by the act.

Regulation 7.—Complaints and Investigations

COMPLAINTS INVOLVING CLAIMS FOR REPARATION

SECTION 1. *Paragraph 1.* Any person desiring to file a claim for damages under the provisions of section 5 and 6 (a) of the act may file a complaint with the Secretary at any time within nine months after the cause of action accrues.

Par. 2. In complaints involving damages in connection with the sale or purchase of produce to or by a licensee, the complainant will be expected to show that the statute of frauds, when applicable, has been complied with.

Par. 3. So far as practicable, every such complaint shall state:

- (a) The name and address of each party and of his agent, if any, representing him;
- (b) Kind of produce shipped;
- (c) Date of shipment;
- (d) Car initial and number, if car lot;
- (e) Quantity shipped;
- (f) Quality or grade of each kind of produce;
- (g) If a sale, state: Sale price -----; amount actually received -----;
- (h) If a consignment, state reported proceeds: Gross -----; net -----; date -----;
- (i) Amount of damages claimed: -----;
- (j) Statement of material facts, including terms of contract.

Par. 4. The complaint must be accompanied by all available original papers, or true copies thereof, relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, account sales, and any special contracts or agreements.

Par. 5. The complainant or his authorized agent must certify over his own signature that the facts alleged in his complaint are true to the best of his knowledge and belief, and that all available pertinent papers or true copies thereof are submitted with the complaint.

Par. 6. If complaints are filed by telegraph, such complaints should state all of the details possible, including the amount of damages claimed, and must be confirmed by a formal complaint as provided in the preceding paragraphs of this section.

Par. 7. If the Secretary believes the facts set out in the complaint warrant such action, he shall serve a copy of the complaint upon the licensee complained of, who shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be fixed by the Secretary.

Par. 8. Upon failure or refusal of the licensee complained of to explain satisfactorily in writing or to make such reparation as is satisfactory to the complainant, the Secretary may order a public hearing upon the matter before an examiner for the department, and due notice of such public hearing shall be given to the persons concerned, which hearing shall be held in any place in which the licensee complained of is in business.

Par. 9. In such a public hearing the complainant and the licensee complained of may appear personally or by counsel, the burden of proof being upon the complainant. Representatives of the department who may have knowledge of any facts in the case, and any other persons having information, accounts, records, or memoranda relating to the subject of the complaint, may be subpoenaed to testify or furnish evidence at such hearing by deposition.

Par. 10. If, after such public hearing, the Secretary determines that the licensee complained of has violated any provisions of paragraphs 1, 2, 3, or 4 of section 2 of the act he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as the result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order.

Par. 11. If complaint for reparation is filed by a nonresident of the United States against a licensee, it shall be accompanied by a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or in double the amount of the claim with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including attorney's fees of respondent in case of failure to sustain the case.

COMPLAINTS NOT INVOLVING REPARATION

SEC. 2. Paragraph 1. Complaints of violation of any provision of section 2 of the act may be filed with the chief of the bureau and investigation may be requested by any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory or any employee of the United States Department of Agriculture, or any interested person, and may be made the basis of a complaint of the Secretary against the party complained of at any time within two years after the violation of law occurred: *Provided, however,* That a flagrant or repeated violation of the act occurring more than two years prior to the complaint may be investigated and considered.

Par. 2. So far as practicable, every such complaint shall state:

- (a) The name and address of each party and of his agent, if any, representing him;
- (b) Kind of produce shipped;
- (c) Date of shipment;
- (d) Car initial and number, if car lot;
- (e) Quantity shipped;
- (f) Quality or grade of each kind of produce;
- (g) If a sale, state: Sale price -----; amount actually received -----;
- (h) If a consignment, state reported proceeds: Gross -----;
net -----; date -----;
- (i) Statement of material facts, including terms of contract.

Par. 3. The complaint must be accompanied by all available original papers, or true copies thereof, where originals are not available, relating to the transactions complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, account sales, and any special contracts or agreements.

Par. 4. The complainant or his authorized agent must certify over his own signature that all of the facts alleged in his complaint are true to the best of his knowledge and belief, and that all available pertinent papers or true copies thereof are submitted with the complaint.

Par. 5. The Secretary may proceed with the handling of the complaint without further action by the person originally filing the complaint, except as he may be subpoenaed as a witness in the case or his deposition taken without expense to him.

Par. 6. Upon receipt of all of the information and supporting evidence submitted by the complainant, the chief of bureau shall make such investigation as in his opinion is justified by the facts. If such investigation discloses that no violation of the act has occurred, both parties to the complaint shall be advised and the complaint dismissed.

Par. 7. If the facts warrant such action, the chief of bureau shall have such complaint served on the person concerned and shall afford him an opportunity to answer the complaint within a reasonable time prescribed by the chief of bureau. If, upon receipt of his answer, the chief of bureau finds that there has been no violation of the act warranting the publication of the facts or the suspension or revocation of the license, the complaint may be dismissed, both parties to the complaint being advised of such action.

Par. 8. In a hearing on any complaint the Secretary or any officer or employee designated by him may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under the act.

Par. 9. If the facts set forth in the original complaint seem to justify it, or if as a result of the preliminary investigation it appears necessary or desirable, the Secretary shall designate an examiner to hold a hearing in any place in which the licensee complained of is in business.

Par. 10. At such a hearing the case shall be conducted by representatives of the Secretary without expense to the complainant. Representatives of the Secretary who have knowledge of the material facts in the case may appear as witnesses, and record of the evidence shall be taken and transcript prepared.

Par. 11. Upon the termination of such a hearing the examiner will announce that an opportunity for oral argument and/or the filing of briefs on the matter will be afforded by the Secretary at a time and place to be fixed by him.

FAILURE TO KEEP PROPER RECORDS

SEC. 3. Paragraph 1. If an investigation in connection with any complaint shows that the accounts, records, and memoranda of the licensee are not in compliance with section 9 of the act, the licensee shall be afforded an opportunity for a hearing.

Par. 2. If a licensee refuses to permit inspection of his accounts, records, and memoranda by the chief of bureau or his duly authorized agents in violation of section 13 (a) of the act, the licensee shall be afforded an opportunity for a hearing.

Par. 3. The same procedure will be followed in investigations and hearings under this section as is provided in paragraphs 9, 10, and 11 of section 2 of this regulation.

Regulation 8.—Service of Order

SECTION 1. Service of any order required by the act or prescribed by these regulations shall be deemed sufficient if made by registered mail or personally upon the licensee. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. Personal service includes leaving notice at the usual place of business set forth in the license or at the last and usual place of abode of any member of a partnership or officer of an association or corporation.

Regulation 9.—Inspection Service

SECTION 1. Paragraph 1. The rules and regulations of the Secretary of Agriculture governing the inspection and certification of fruits and vegetables as outlined in Service and Regulatory Announcements No. 93 (Agricultural Economics) and amendments thereto, and such additional amendments as may from time to time be promulgated, in so far as they apply to fresh fruits and fresh vegetables, shall govern the inspection of these products under this act, and are hereby made a part of these regulations.

Par. 2. In any hearing under the act certificates of inspection issued in accordance with the provisions of the act shall be accepted as prima facie evidence.

TEXT OF THE ACT

[46 STAT. 531—71ST CONGRESS]

An act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia;

(4) The term "perishable agricultural commodity" means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character;

(5) The term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another;

(6) The term "dealer" means any person engaged in the business of buying or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect of sales of any such commodity of his own raising; and (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" in respect of any such commodity in any calendar year until his purchases of such commodity in carloads in such year are in excess of twenty. Any person not considered as a "dealer" under clauses (A) and (B) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer." As used in this paragraph, the term "in carloads" includes corresponding wholesale or jobbing quantities as defined for any such commodity by the Secretary;

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively;

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act.

UNFAIR CONDUCT

SEC. 2. It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

(1) For any commission merchant or broker to make any fraudulent charge in respect of any perishable agricultural commodity received in interstate or foreign commerce;

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought or sold in interstate or foreign commerce by such dealer;

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce;

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold or contracted to be bought or sold in such commerce by such dealer; or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had;

(5) For any commission merchant, dealer, or broker, for a fraudulent purpose, to represent by word, act, or deed that any perishable agricultural commodity received in interstate or foreign commerce was produced in a State or in a country other than the State or the country in which such commodity was actually produced;

(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice, placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate under authority of any Federal or State inspector as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced.

LICENSES

SEC. 3. (a) After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subdivision shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(b) Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application. Upon the filing of the application, and annually thereafter, the applicant shall pay a fee of \$10.

SEC. 4. (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided in subdivision (b) of this section, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, but said license shall automatically terminate unless the annual fee is paid within thirty days after notice has been mailed that payment is due.

(b) The Secretary shall refuse to issue a license to an applicant if after notice and hearing he finds (1) that the applicant has previously been responsible in whole or in part for any violation of the provisions of section 2 for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office or, in the case of a partnership, had any share or interest, was revoked, or (2) in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, had previously been responsible in whole or in part for any violation of the provisions of section 2 for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked. Notwithstanding the foregoing provisions, the Secretary, in the case of such applicant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of this Act, but such license shall not be issued before the expiration of one year from the date of such revocation.

LIABILITY TO PERSON DAMAGED

SEC. 5. (a) If any commission merchant, dealer, or broker violates any provision of paragraph (1), (2), (3), or (4) of section 2 he shall be liable to the persons or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

COMPLAINT AND INVESTIGATION

SEC. 6. (a) Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person, may file, in accordance with rules and regulations of the Secretary a complaint of any violation of any provision of section 2 by any commission merchant, dealer, or broker, and may request an investigation of such complaint by the Secretary.

(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business.

(d) After an opportunity for a hearing on a complaint the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2.

(e) In case complaint is made by a nonresident of the United States before any action is taken thereon, that the complainant shall be required to furnish a bond double the amount of the claim, the bond to be conditioned upon the payment of costs, including attorney's fees of respondents, in case of failure to sustain the case.

REPARATION ORDER

SEC. 7. (a) If after a hearing on a complaint made by any person under section 6 the Secretary determines that the commission merchant, dealer, or broker has violated any provision of paragraph (1), (2), (3), or (4) of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order.

(b) If any commission merchant, dealer, or broker does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent state of

the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

SUSPENSION AND REVOCATION OF LICENSE

SEC. 8. Whenever the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, he may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is a flagrant or repeated violation of such provisions, the Secretary may, by order, revoke the license of the offender.

ACCOUNTS AND RECORDS

SEC. 9. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

EFFECTIVE DATE AND FINALITY OF ORDER

SEC. 10. Any order of the Secretary under this Act other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date prescribed for its taking effect application is made to a court of competent jurisdiction by the commission merchant, dealer, or broker against whom such order is directed to have such order set aside or its enforcement, operation, or execution suspended or restrained.

INJUNCTIONS

SEC. 11. For the purposes of this Act the provisions of all laws relating to the suspending or restraining of the enforcement, operation, or execution, or the setting aside in whole or in part, of the orders of the Interstate Commerce Commission are made applicable to orders of the Secretary under this Act and to any person subject to the provisions of this Act.

GENERAL PROVISIONS

SEC. 12. The Secretary may report any violation of this Act for which a civil penalty is provided to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. The costs and expenses of such proceedings shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 13. (a) In the investigation of complaints under this Act, the Secretary or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any commission merchant, dealer, or broker as may be material for the determination of any such complaint. If any such commission merchant, dealer, or broker refuses to permit such inspection, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender until permission to make such inspection is given.

(b) The Secretary, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under this Act.

(c) In case of disobedience to a subpoena, the Secretary or any of his examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Secretary or his examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(d) The Secretary may order testimony to be taken by deposition in any proceeding or investigation or incident to any complaint pending under this Act at any stage thereof. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce accounts, records, and memoranda in the same manner as witnesses may be compelled to appear and testify and produce accounts, records, and memoranda before the Secretary or any of his examiners.

(e) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(f) No person shall be excused from attending, testifying, answering any lawful inquiry, or deposing, or from producing any documentary evidence, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violation of this Act, or upon the taking of any deposition herein provided for, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, or produce evidence, documentary or otherwise, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary, or any such officer or employee, or upon the taking of any such deposition, or in any such cause of proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 14. The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies, and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the disbursing clerk of the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That certificates issued by such inspectors shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

SEC. 15. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or

possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 16. In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person.

SEPARABILITY

SEC. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SHORT TITLE

SEC. 18. This Act may be cited as the "Perishable Agricultural Commodities Act, 1930."

Approved, June 10, 1930.

DEPARTMENTAL INTERPRETATION AND CONSTRUCTION OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Until otherwise interpreted or construed by competent authority the United States Department of Agriculture will take into consideration the following views and interpretations in its early proceedings and findings under the act.

The purpose of the act is to suppress unfair and fraudulent practices in the marketing of fresh fruits and fresh vegetables, whether frozen or packed in ice, in interstate or foreign commerce. Therefore, all of its provisions will be so construed as to make them most effective to this end. It seeks to accomplish this by (1) requiring that commission merchants, dealers and brokers obtain from the Secretary of Agriculture a license for which they must pay an annual fee of \$10; (2) requiring that licensees keep such accounts and records as will show fully and correctly all transactions; (3) prohibiting fraudulent accounting, unjustifiable rejections or failures to deliver, and misrepresentations; and (4) by authorizing the investigation of complaints, the issuance of reparation orders, the publication of facts concerning violations and the suspension or revocation of licenses.

PENALTIES

This act is not a criminal statute. For certain violations of this law, the Secretary of Agriculture may publish the facts and circumstances of the violations or he may suspend the license of the offender for a period not to exceed 90 days, or he may do both. If the offense is flagrant or if the offender has repeatedly violated the law, his license may be revoked.

ACTS FOR WHICH LICENSES MAY BE SUSPENDED OR REVOKED

Licenses may be suspended or revoked:

(1) If any commission merchant or broker makes any fraudulent charge in respect of any produce received in interstate or foreign commerce;

(2) If any dealer rejects, without reasonable cause, any produce bought, or contracted to be bought, in interstate or foreign commerce;

(3) If any dealer, without reasonable cause, fails to deliver in accordance with the terms of the contract any produce sold or contracted to be sold in interstate or foreign commerce;

(4) If any commission merchant discards, dumps, or destroys, without reasonable cause, any produce received by such commission merchant in interstate or foreign commerce;

(5) If any licensee makes, for a fraudulent purpose, any false or misleading statements concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any produce received in interstate or foreign commerce by the licensee, or bought or sold or contracted to be bought or sold in interstate or foreign commerce;

(6) If any licensee, for a fraudulent purpose, fails or refuses truly and correctly to account promptly for any produce bought or sold or contracted to be bought or sold in interstate or foreign commerce to the person with whom such transaction is had;

(7) If any licensee, for a fraudulent purpose, represents by word, act, or deed, that any produce moving in interstate or foreign commerce was produced in a State or county other than the State or country in which such produce was actually produced;

(8) If any licensee, for a fraudulent purpose, removes, alters, or tampers with any card, stencil, stamp, tag, or other notice, placed upon any container or railroad car containing any produce if such card, stencil, stamp, tag, or other notice contains a certificate under authority of any Federal or State

inspector as to the grade or quality of the produce contained in such container or railroad car or the State or country in which such commodity was produced.

ACTS FOR WHICH LICENSES MAY BE SUSPENDED

Licenses may be suspended for any of the foregoing causes or:

(1) If any licensee fails to keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, as required by the act;

(2) If any licensee fails or refuses to permit any duly authorized representative of the Secretary of Agriculture to examine such books, records, and memoranda, or the stocks of produce on hand, involved in any investigation of a complaint under this act, upon demand during business hours.

PUNISHMENT BY PUBLICATION OF FACTS

Punishment only by publication of the facts and circumstances of the violation may be employed in cases in which the offense is not deemed to merit suspension of the license but is sufficiently serious to justify calling the attention of the trade to the offense and the offender. Violations so punished will be taken into consideration in determining whether repeated violations on the part of an offender should cause revocation of his license.

PENALTY FOR DOING BUSINESS WITHOUT A LICENSE

If a commission merchant, dealer, or broker fails to secure a license or if he continues in business after his license has been suspended or revoked or has been terminated for nonpayment of the annual fee, he is subject to a penalty of not more than \$500 and not more than \$25 per day for each day the offense continues. This penalty is recoverable by a civil suit brought against the offender.

REJECTION OR FAILURE TO DELIVER

One of the actions classed in the law as unfair conduct is for a dealer to reject or fail to deliver produce in accordance with the terms of the contract without reasonable cause. Reasonable cause for rejection or failure to deliver produce bought or sold, or contracted to be bought or sold, exists, among other reasons, by reason of a breach of contract by the other party, an act of God, operation of law, or a condition beyond the control of the party so rejecting or failing to deliver such commodity.

Some courts have held that failure to deliver produce contracted for future delivery can not be excused by reason of local crop shortage or crop failure unless such failure is so complete that the goods contracted could not be obtained by the shipper. The department will give consideration to such decisions when investigating complaints for nondelivery.

If the contract calls for the delivery of the product from a certain crop or tract, the failure of that crop or tract to produce the quantity or grade specified is justifiable reason for nondelivery.

DUMPING

Another action classed as unfair is for a commission merchant to discard, dump, or destroy goods without reasonable cause. Reasonable cause for discarding, dumping, or destroying any perishable agricultural commodity received in interstate or foreign commerce for or on behalf of another exists when the commodity in question has no commercial value, or when it is dumped by the order of a health officer or other authorized official, or when the shipper has consented to such disposition. The term "commercial value" means any value that a commodity may have for any purpose that can be ascertained in the exercise of due diligence by the agent without unreasonable expense or loss of time.

REPARATION ORDER

If a licensee commits any of the violations listed above under numbers 1, 2, 3, 4, 5, and 6, he becomes liable to the person or persons injured thereby for the full amount of the damages sustained in consequence of such violation. Such liability may be established by a reparation order issued by the Secretary of Agriculture as set forth in the act and regulations or by a suit in any court of competent jurisdiction.

The department is not authorized to enforce reparation orders. If the person against whom they are directed does not pay, the claimant's only recourse is to civil suit. It should also be realized that the issuance of a reparation order does not prevent the Secretary of Agriculture from suspending or revoking the license of the offender. Neither does the issuance of a suspension or revocation order preclude the making of an order for reparation.

MISLEADING STATEMENTS AND FRAUDULENT CHARGES

If a commission merchant or other agent renders an accounting of sales, when in fact a part or all of the produce was bought by himself or sold to someone in whose business the agent is interested, and does not disclose that fact to his principal, the department will hold that he has rendered a false return because such a sale is voidable at the election of the owner of the produce, who can not ratify the action unless in possession of all the facts.

Goods may be taken to account to clean up remnants so that returns shall not be unduly delayed, if the owner consents to or ratifies such action. Such goods are really bought by the agent for himself and he can not legally deduct a commission from the purchase price, unless the owner has consented to, or by acquiescence has ratified, such a charge.

Therefore any account sales in which commission is charged on goods which were taken to account by the agent or sold to a party in whose business he has an interest, and which fails to show such facts, will be deemed to show a fraudulent charge. The department believes that when it is necessary to take goods to the account of the agent the correct accounting will show the quantity and kind of goods so taken and the price, with no commission deducted from that item.

An agent who averages the sales of produce from various consignors and remits to each on the basis of an average price has not rendered a correct and truthful account to such consignors unless they have been previously advised of the agent's practice or unless they have signed contracts which specifically grant the agent the right to pool shipments or average returns.

COMMISSIONS ON DIFFERENT KINDS OF SALES

No charge will be deemed fraudulent and no pyramiding of brokerage or commissions will be deemed fraudulent if the owner has agreed thereto in advance. In the absence of such an agreement the usual brokerage or commission will be deemed to have been agreed to. The commission merchant who sells full carloads and who also sells in jobbing or small lots, either from the car or from his store, may properly charge different rates of commission for these differing services. If, however, any goods received for sale on commission are in fact sold in small jobbing or so-called retail lots, the accounting must show these sales as actually made. If the usual commission is based on sales of carloads and no provision has been made for a higher rate of charge on jobbing sales, the usual commission only may be charged on such sales. Any accounting which shows all produce sold at so-called carload prices, when in fact any part was sold at a higher unit price, will be deemed fraudulent.

With regard to the charging of two commissions or two brokerages, it is the position of the department that this may be done legally only with the knowledge and consent of the shipper. In a given market it is to be presumed that the agent is capable of securing adequate returns for a shipment. If he has to turn goods over to another agent for disposal it does not appear that he has performed a service entitling him to a commission. If the agent feels it wise to forward the shipment to another market, the consent of the shipper should be obtained. Double commission or double brokerage should not be charged unless the shipper consents, and gross receipts and all deductions, including the double commission or double brokerage charges, must be shown on the account sales or other statement rendered. Failure to disclose all the facts in accounting to the shipper will be deemed failure truly and correctly to account within the meaning of the act.

ACCOUNTS AND RECORDS

Section 9 of the act requires each licensee to keep such accounts, records, and memoranda as will fully and correctly disclose all transactions involved in his business. The department believes that the following records are essential and that failure to keep any one of them may result in inability fully and

correctly to disclose all facts relating to a transaction and thus render the licensee liable to suspension of his license:

(1) Bills of lading, express receipts, diversion orders, paid freight and other bills, car manifests, letter and wire correspondence, inspection certificates, accounts of sale, papers relating to loss and/or damage claims against carriers, and all other pertinent papers relating to the shipment, handling, and delivery of each lot of produce, or true and correct copies thereof, should be filed and kept for a period of not less than two years after the completion of the transactions to which they relate. (It is convenient to use jackets, folders, or envelopes, which should be plainly marked in such manner as to identify the lot or shipment of produce to which the papers relate.)

(2) Each licensee should keep in consecutive order a complete record of all produce received, showing the date of arrival and unloading, the car initials and numbers, if any, the number of packages, or the quantity received, the name and address of the consignor or seller, and the disposition thereof.

(3) All sales of produce handled for the account of or on behalf of another, whether such sales are made for cash or on credit extended by the licensee, should be recorded on sales invoices or sales slips which bear printed serial numbers. At least one carbon copy of each such sales record should be made and kept on file either in the order of the serial numbers or the dates of sales, and should clearly identify each lot of produce from which sales are made, either by lot number, lot letter, or other means of identification, which should correspond with the identification marks used to distinguish such lots of produce on all other records relating to each such lot. Such sales records should clearly show the date of sales, the name of the purchaser, the kind and quantity sold, and the unit price at which the sale is made. The only exceptions should be with reference to small jobbing or retail lots sold for cash for less than \$5 to purchasers who do not require delivery.

(4) Licensees whose operations include the furnishing of packages or other supplies, the packing of any produce for or on behalf of another, or the processing, storing, distributing, or selling of such produce, should, in addition to other records, keep such as shall clearly show the character and quantity of the produce received from each consignor, owner, or patron, and the result of all grading and packing operations on each lot with respect to each kind of produce so handled including the cost of materials and the disposition of culls.

(5) In the event of the rejection and return of any produce sold for or on behalf of another, or of any necessary allowance or adjustment being made to the purchaser thereof, a memorandum showing the amount of the credit or adjustment, with reasons therefor, should be made and filed with the corresponding sales record, or a reference should be made upon such sales record indicating that such rejection, return allowance, or adjustment has been made, and showing where the corresponding memorandum is filed.

(6) If a licensee knowingly sells or otherwise disposes of any produce, the handling or sale of which is entrusted to him, to any person in whose business such licensee or any stockholder, owner, officer, or salesman thereof, has a financial interest, such licensee should disclose such fact in accounting to the owner or consignor of the produce.

(7) If the licensee shall purchase or take title to any portion of produce shipped to him for sale, for or on behalf of another, his records, including account sales rendered, should show such fact. If the goods are sold before the account sales is rendered, the accounting should be on the basis of the actual sale price.

(8) No licensee should make such use or disposition of funds in his or its possession or control as will endanger or impair the faithful and prompt accounting for and payment of such portion thereof as may be due the owner or consignor of produce, or other person having an interest therein.

It should be borne in mind by brokers that unless their records contain a contract or memorandum of sale signed by the purchaser, or a broker's memorandum, or some other evidence is available that the terms of sale are binding upon the purchaser, then a broker who represents to the seller that a sale has been made at a specified price will be considered to have made a false and misleading statement in violation of the act. Upon a complaint for reparation under such circumstances the department will hold the broker liable for the loss sustained by the shipper through acting on the broker's representation. Furthermore, brokers, and those who deal through them, should remember

that in complaints involving damages in connection with the sale or purchase of produce to or by a licensee, the department may decline to make an investigation under this act unless the complainant produces evidence that a valid enforceable agreement was made.

When an agent harvests, grades, packs, or processes a product for another he must make and keep a number of special records not required of other licensees. To determine whether he has correctly discharged his agency contract it may be necessary for his records to show the cost of sorting, grading, packing or other operations, and of materials. The result of the packing operation on each kind or lot of produce must be shown and the detailed disposition of each kind and grade, often including the culls.

Agency and sales contracts which involve production or packing operations are often elaborate and complicated. In every case the department will construe the law to mean that the records must be as detailed as the contract and must show that its provisions have been met. Failure to produce such records will be regarded by the department as cause for the suspension of a license.

Agency or contract transactions involving the import or export of produce may necessitate the keeping of special records not required to disclose all the facts in interstate transactions.

With reference to the whole question of records the department holds that the law requires that they be adapted to the particular business which the licensee is conducting and that in each case they must fully disclose all his transactions. So many different sorts of contracts are made and such a wide range of services may be performed by agents for others that it is impossible to outline every class of records which may be found essential. The burden is placed by the act on every licensee to determine what he must keep and what he must put on record in order to disclose every essential fact regarding every transaction in his business. Therefore, the foregoing suggestions concerning records are to be considered as indications of what is essential rather than a complete listing of the records needed in any particular case.

INTERSTATE COMMERCE PROVISIONS

Produce received in interstate or foreign commerce and sold by one dealer to another dealer in the same market or in the same State shall be considered as subject to the provisions of this law if it has not ended its interstate character (a) by having been unloaded except for storage in transit, or (b) sold in broken lots. However, if such produce is sold in its original unbroken or undivided form, or is diverted to, or sold to a dealer in, another market without having been unloaded, it will be considered as having retained its interstate character within the meaning of this act.

Produce grown in the same State in which the place of business of the purchaser is located, or at which the produce is delivered under a contract of sale, will be considered as interstate commerce under this act if such produce passed through another State in transit from the vendor to the purchaser. All transactions in the District of Columbia are subject to the act regardless of where the produce was grown.

COMMENTS ON TERMS OF SALE

It is important that the essential terms of sale be stated in writing in order to meet the requirements of the statute of frauds. This may be done (a) by a memorandum of sale signed by the purchaser and by the vendor, or their duly authorized representatives, (b) by correspondence which identifies the produce and states the terms of sale, or (c) by wires provided the produce is identified and the essential terms of sale are covered. Unless the terms of sale are fully stated in writing, aggrieved parties may find that they not only are not in a position to avail themselves of the benefits of this act in obtaining reparation but that they have left the Department of Agriculture without the necessary evidence to bring successful action against the offender.

The original seventeenth section of the statute of frauds which is the law in most, if not all of the States, also provides that such statute may be complied with where, "the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment." As the written contract is usually more susceptible to proof than the other provisions above quoted, it is desirable to have a signed contract.

Brokers and those who deal through them should remember that in filing complaints alleging the rejection or the repudiation of a contract, the department may decline to entertain such complaints unless the complainant, produces evidence that a valid enforceable agreement was made. The laws of agency vary in the different States. In some States the party to be sued in case of breach of contract is bound by the issuance of a broker's memorandum of sale signed only by the broker whereas in other States, the order must be signed by the party to be sued. The law of the State having jurisdiction will govern.

When produce covered by this act arrives on the market of the purchaser, or at the destination to which the produce may have been diverted by him, the purchaser is expected either to accept or reject the produce promptly. Twenty-four hours after receipt of notice of arrival is considered a sufficient time within which to accept or reject the produce. Unless the dealer notifies the vendor within 24 hours after he has received notice of the arrival of the produce that he rejects the produce, he will be deemed to have accepted the produce as being in accordance with the terms of the contract relating to such produce.

In the case of a sale of produce at a price f. o. b. shipping point, if the shipper consigns the goods to himself with instructions to notify the buyer, and there is no understanding between the parties as to when title shall pass other than that indicated by the fact that the goods are consigned to the shipper, then title does not pass until the buyer has paid the draft. However, in some States this rule has been changed by statute and in these States if the seller has consigned the goods in his name only to secure performance of the contract by the buyer and there is no understanding between the parties as to when title shall pass, the produce is shipped at the risk of the buyer. Furthermore, if the parties to the contract have agreed that title shall pass at the point of shipment, or have agreed that the transaction shall be in accordance with the provisions of some recognized set of trading rules and these rules provide that title shall pass at time of shipment, then this understanding will be considered as controlling even though the goods are consigned to the shipper with instructions to notify the buyer.

If goods are sold f. o. b. shipping point and are consigned to the buyer and there is no express understanding between the parties to the contrary, then the title to the goods passes at the point of shipment, and in these cases it is immaterial what the condition of the goods may be at destination because if the shipper is able to show that he placed upon the car goods of the type and quality desired, in proper condition, he is entitled to receive the purchase price regardless of their condition upon receipt.

Ordinarily the buyer may inspect the goods on arrival even though title passed at shipping point, but this inspection relates to the condition of the goods at the time they were shipped and not to the condition of the goods on arrival, except as the condition on arrival may have a bearing on the condition of the goods at the time they were shipped. If the buyer and seller agree that the grade of the goods as shown by a Federal inspection certificate at the point of shipment shall be final, then such certificate will be regarded as conclusive and not subject to impeachment except for fraud, bad faith, or failure to exercise honest judgment. If the car were bought on shipping-point inspection certificate without a definite agreement that such inspection should be final, then the buyer could ask for an appeal inspection upon arrival of the car and if it developed that the shipping point inspection was wrong, then the department would consider the appeal inspection as governing.

The Federal fruit and vegetable inspection service is available for the use of vendors, dealers, commission merchants or brokers to determine the quality or condition of shipment of produce which may be the subject of dispute. Certificates of inspection by the Government are prima facie evidence of the facts stated therein. Although not required of interested parties, it is evident that a Federal certificate of inspection will provide valuable evidence in the event of an investigation under the provisions of this law.

